

### **Remarks**

This Amendment is responsive to the final Office Action mailed on January 17, 2007. Claims 1-5 and 8-17 are pending. Claims 1, 2, 8, 10, and 13 have been amended. Claims 6 and 7 have been cancelled. In view of the following remarks and the forgoing amendments, Applicants respectfully submit that this application is in complete condition for allowance and request reconsideration of the application in this regard.

### **Claim Objections**

Applicants have amended claims 2, 6, and 10 in a manner believed sufficient to overcome the claim objections. Applicants request that the objections be withdrawn.

### **Rejection of Claims under 35 U.S.C. § 102(b)**

#### ***Claims 1-10, 12 and 13 over Kato***

Claims 1-10, 12, and 13 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 4,503,006 to Kato (hereinafter *Kato*). Of the rejected claims, claims 1 and 13 are the sole independent claims and claims 6 and 7 have been cancelled. The Examiner contends that *Kato* shows or teaches all the elements of the rejected claims. Applicants respectfully traverse the Examiner's contention.

The Examiner asserts that *Kato* discloses “a forming space (item 6 - figure 1)” and “the cutting device having a cutter (item 12 – figure 1) that is at least partially introducible into the forming space.” Applicants submit that a person having ordinary skill in the art would recognize that *Kato* teaches a forming space that is defined inside a die (5). The tag pin extrusion is shaped in the forming space inside the die (5). After the extrusion is discharged from the outlet opening (unlabeled) of the die (5), no further shaping of the extrusion occurs. In other words, the cutter device (6) is not introduced into the forming space inside the die (5). The cutter device (6) is downstream of the die (5). Therefore, *Kato* fails to disclose “a slit in the wall” of the forming space and that the cutting device has “a cutter that is at least partially introducible through the slit into the forming space.”

*Kato* discloses that the cutter device (6) is positioned downstream from the outlet opening of the forming space inside die (5). A cooling device that facilitates “a high cooling performance in a relatively short time” is disposed between the die (5) and the cutting device (6). See *Kato* at

col. 3, lines 41-49. The cooling device cools the extrusion “to a temperature at which the cutting at the next operation step can be facilitated.” See *Kato* at col. 4, lines 39-42. *Kato* discloses that the cutter device (6) includes guide members (7, 8) with guide through-holes (9, 10). However, the cutter device (6) does not further shape the extrusion. Instead, the guide members (7, 8) in *Kato* operate to guide the cooled extrusion while the cutter member (12) cuts the extrusion into connected tag pins. *Kato* fails to disclose that the shape of the extrusion is altered by the cutter device (6) to differ from the shape defined at the outlet opening from the forming space inside die (5). Therefore, the cutter device (6) fails to include a forming space because the extrusion is not further shaped.

Even if the cutter device (6) was considered to have a forming space, which it does not, *Kato* fails to disclose that “the slit extends far enough through the wall so that the cutter can cut completely through the cross section of the forming space,” as set forth in claim 1. The Examiner argues that the forming space of *Kato* consists of cutter device (6). *Kato* discloses that the cutter device (6) includes a cutter guide groove (11). As best seen in Figure 2, the cutter member (12) is rotated eccentrically about the axis labeled as “O” and, consequently, cannot cut completely through the cross section of the forming space that the Examiner alleges is present inside the cutter device (6). This is further substantiated by the fact that the forming space inside cutter device (6) is only partially opened on its upper side (Fig. 2) whereas the other sides are closed. Because of the construction, the cutter member (12) cannot completely cut through the cross section of the forming space.

In order for a reference to anticipate the invention in a claim, the reference must teach each and every element in the precise arrangement set forth in the claim. If the reference fails to teach even one of the claimed elements, the reference does not and cannot anticipate the claimed invention. Because *Kato* fails to disclose that “the slit extends far enough through the wall so that the cutter can cut completely through the cross section of the forming space” and that the cutting device has “a cutter that is at least partially introducible through the slit into the forming space,” *Kato* fails to anticipate Applicants’ independent claim 1. Therefore, for at least these reasons, Applicants respectfully request that the Examiner withdraw the rejection.

Because claims 2-6, 8-10, and 12 depend from independent claim 1, Applicants submit that these claims are also patentable. Furthermore, each of claims 2-10 and 12 recites a unique combination of elements not disclosed or suggested by *Kato*.

Independent claim 13 is patentable for at least the same reasons as independent claim 1, as remarked above. Consequently, Applicants request that the rejection of this claim be withdrawn.

Claims 1-5, 12, 13, and 15-17 over Covington

Claims 1-5, 12, 13, and 15-17 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 4,112,545 to Covington et al. (hereinafter *Covington*). Of the rejected claims, claims 1 and 13 represent independent claims. The Examiner contends that *Covington* shows all the elements of the rejected claims. Although Applicants respectfully traverse the rejection, Applicants have nevertheless amended independent claim 1 to add the subject matter of dependent claims 6 and 7 for purposes of advancing prosecution. Applicants have amended independent claim 13 in an analogous manner, which is believed by the Applicants to be sufficient to overcome the rejection of claim 13 over *Covington*. Therefore, for at least this reason, Applicants respectfully request that the Examiner withdraw the rejection of independent claims 1 and 13, claims 2-5, 12, 13, 16, and 17 that depend from independent claim 1, and claim 15 that depends from independent claim 13.

Claims 1-5, 11-13, 16, and 17 over Gilson

Claims 1-5, 11-13, 16, and 17 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 2,497,724 to Gilson et al. (hereinafter *Gilson*). Of the rejected claims, claims 1 and 13 represent independent claims. The Examiner contends that *Gilson* shows all the elements of the rejected claims. Although Applicants respectfully traverse the rejection, Applicants have nevertheless amended independent claim 1 to add the subject matter of dependent claims 6 and 7 for purposes of advancing prosecution. Applicants have amended independent claim 13 in an analogous manner, which is believed by the Applicants to be sufficient to overcome the rejection of claim 13 over *Gilson*. Therefore, for at least this reason, Applicants respectfully request that the Examiner withdraw the rejection of independent claims 1 and 13, and claims 2-5, 11-13, 16, and 17 that depend from independent claim 1.

Claims 1-9 and 12-15 over Morikawa

Claims 1-9 and 12-15 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 5,289,764 to Morikawa et al. (hereinafter *Morikawa*). Of the rejected claims, claims 1 and 13 are the sole independent claims and claims 6 and 7 have been cancelled. The Examiner contends that *Morikawa* shows or teaches all the elements of the rejected claims. Applicants respectfully traverse the Examiner's contention.

The Examiner asserts that *Morikawa* discloses “a forming space (portions about item 35 – figure 3, column 6, lines 10-15)” and “the cutting device having a cutter (item 38 – figure 3) that is at least partially introducible into the forming space.” In contrast, *Morikawa* discloses a forming space that ends at the level of the lower end of the wall surrounding the hopper (15) and above the cutting device (38). Below this lower end, the dough is no longer supported by, or otherwise contacted by, the wall of the hopper (15) for forming. Thus, the lower end of the wall about hopper (15) defines an outlet opening from the forming space inside the hopper (15) and ends at a level above the cutting device (38). The wall of the hopper (15) does not include a slit into which the cutting device (38) is introduced.

The Examiner argues that the forming space in *Morikawa* is near item (35) and that item (56) is a wall for forming the mass. However, the dough is not formed after exiting the hopper (15) or by interaction with item (56). Instead, the dough is only cut into slices by the cutting device (38). The dough-supporting members (30, 56) do not define a forming space that forms the dough and, under any reasonable construction, do not include a wall that forms the dough and a slit in a wall into which the cutting device (38) is introduced.

Because *Morikawa* fails to disclose “a cutter that is at least partially introducible through the slit” in a wall for forming the mass and “into the forming space” bounded by the wall, *Morikawa* fails to anticipate Applicants' independent claim 1. Therefore, for at least this reason, Applicants respectfully request that the Examiner withdraw the rejection.

Because claims 2-5, 8, 9, and 12 depend from independent claim 1, Applicants submit that these claims are also patentable. Furthermore, each of claims 2-5, 8, 9, and 12 recites a unique combination of elements not disclosed or suggested by *Morikawa*.

Independent claim 13, as amended, is patentable for at least the same or similar reasons as independent claim 1, as remarked above. Because claims 14 and 15 depend from independent claim 13, Applicants submit that these claims are also patentable for at least the same reasons

discussed above. Furthermore, each of these claims recites a unique combination of elements not taught, disclosed or suggested by *Morikawa*. Consequently, Applicants request that the rejection of these claims be withdrawn.

### **Conclusion**

Applicants have made a bona fide effort to respond to each and every requirement set forth in the Office Action. In view of the foregoing amendments and remarks, this application is submitted to be in complete condition for allowance and, accordingly, a timely notice of allowance to this effect is earnestly solicited. In the event that any issues remain outstanding, the Examiner is invited to contact the undersigned to expedite issuance of this application.

Applicants do not believe fees are dues in connection with filing this communication. If, however, any petition or additional fees are necessary as a result of this communication, the Commissioner is hereby authorized to charge any under-payment or fees associated with this communication or credit any over-payment to Deposit Account No. 23-3000.

Respectfully submitted,  
WOOD, HERRON & EVANS, L.L.P.

/William R. Allen/  
William R. Allen  
Reg. No. 48,389

2700 Carew Tower  
441 Vine Street  
Cincinnati, Ohio 45202-2917  
513/241-2324 (Voice)